

103^D CONGRESS
1ST SESSION

S. 1663

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in the illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, NOVEMBER 2), 1993

Mr. LEVIN (for himself, Mr. RIEGLE, Mr. FEINGOLD, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in the illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Domestic Chemical
5 Diversion Control Act of 1993”.

1 **SEC. 2. DEFINITION AMENDMENTS.**

2 (a) DEFINITIONS.—Section 102 of the Controlled
3 Substances Act (21 U.S.C. 802) is amended—

4 (1) in paragraph (33), by striking “any listed
5 precursor chemical or listed essential chemical” and
6 inserting “any list I chemical or any list II chemi-
7 cal”;

8 (2) in paragraph (34)—

9 (A) by striking “listed precursor chemical”
10 and inserting “list I chemical”; and

11 (B) by striking “critical to the creation”
12 and inserting “important to the manufacture”;

13 (3) in paragraph (34)(A), (F), and (H), by in-
14 serting “, its esters,” before “and”;

15 (4) in paragraph (35)—

16 (A) by striking “listed essential chemical”
17 and inserting “list II chemical”;

18 (B) by inserting “(other than a list I
19 chemical)” before “specified”; and

20 (C) by striking “as a solvent, reagent, or
21 catalyst”; and

22 (5) in paragraph (38), by inserting “or who
23 acts as a broker or trader for an international trans-
24 action involving a listed chemical, a tableting ma-
25 chine, or an encapsulating machine” before the
26 period;

1 (6) in paragraph (39)(A)—

2 (A) by striking “importation or exportation
3 of” and inserting “importation, or exportation
4 of, or an international transaction involving
5 shipment of,”;

6 (B) in clause (iii) by inserting “or any cat-
7 egory of transaction for a specific listed chemi-
8 cal or chemicals” after “transaction”;

9 (C) by amending clause (iv) to read as
10 follows:

11 “(iv) any transaction in a listed chemical
12 that is contained in a drug that may be mar-
13 keted or distributed lawfully in the United
14 States under the Federal Food, Drug, and Cos-
15 metic Act (21 U.S.C. 301 et seq.) unless—

16 “(I)(aa) the drug contains ephedrine
17 or its salts, optical isomers, or salts of op-
18 tical isomers as the only active medicinal
19 ingredient or contains ephedrine or its
20 salts, optical isomers, or salts of optical
21 isomers and therapeutically insignificant
22 quantities of another active medicinal in-
23 gredient; or

24 “(bb) the Attorney General has deter-
25 mined under section 204 that the drug or

1 group of drugs is being diverted to obtain
2 the listed chemical for use in the illicit pro-
3 duction of a controlled substance; and

4 “(II) the quantity of ephedrine or
5 other listed chemical contained in the drug
6 included in the transaction or multiple
7 transactions equals or exceeds the thresh-
8 old established for that chemical by the
9 Attorney General.”; and

10 (D) in clause (v), by striking the semicolon
11 and inserting “which the Attorney General has
12 by regulation designated as exempt from the
13 application of this title and title II based on a
14 finding that the mixture is formulated in such
15 a way that it cannot be easily used in the illicit
16 production of a controlled substance and that
17 the listed chemical or chemicals contained in
18 the mixture cannot be readily recovered;”;

19 (7) in paragraph (40), by striking “listed pre-
20 cursor chemical or a listed essential chemical” each
21 place it appears and inserting “list I chemical or a
22 list II chemical”; and

23 (8) by adding at the end the following new
24 paragraphs:

1 “(42) The term ‘international transaction’ means a
2 transaction involving the shipment of a listed chemical
3 across an international border (other than a United States
4 border) in which a broker or trader located in the United
5 States participates.

6 “(43) The terms ‘broker’ and ‘trader’ mean a person
7 that assists in arranging an international transaction in
8 a listed chemical by—

9 “(A) negotiating contracts;

10 “(B) serving as an agent or intermediary; or

11 “(C) bringing together a buyer and seller, a
12 buyer and transporter, or a seller and transporter.”.

13 (b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

14 (1) PROCEDURE.—Part B of the Controlled
15 Substances Act (21 U.S.C. 811 et seq.) is amended
16 by adding at the end the following new section:

17 “REMOVAL OF EXEMPTION OF CERTAIN DRUGS

18 “SEC. 204. (a) REMOVAL OF EXEMPTION.—The At-
19 torney General shall by regulation remove from exemption
20 under section 102(39)(A)(iv) a drug or group of drugs
21 that the Attorney General finds is being diverted to obtain
22 a listed chemical for use in the illicit production of a con-
23 trolled substance.

24 “(b) FACTORS TO BE CONSIDERED.—In removing a
25 drug or group of drugs from exemption under subsection
26 (a), the Attorney General shall consider, with respect to

1 a drug or group of drugs that is proposed to be removed
2 from exemption—

3 “(1) the scope, duration, and significance of the
4 diversion;

5 “(2) whether the drug or group of drugs is for-
6 mulated in such a way that it cannot be easily used
7 in the illicit production of a controlled substance;
8 and

9 “(3) whether the listed chemical can be readily
10 recovered from the drug or group of drugs.

11 “(c) SPECIFICITY OF DESIGNATION.—The Attorney
12 General shall limit the designation of a drug or a group
13 of drugs removed from exemption under subsection (a) to
14 the most particularly identifiable type of drug or group
15 of drugs for which evidence of diversion exists unless there
16 is evidence, based on the pattern of diversion and other
17 relevant factors, that the diversion will not be limited to
18 that particular drug or group of drugs.

19 “(d) REINSTATEMENT OF EXEMPTION WITH RE-
20 SPECT TO PARTICULAR DRUG PRODUCTS.—

21 “(1) REINSTATEMENT.—On application by a
22 manufacturer of a particular drug product that has
23 been removed from exemption under subsection (a),
24 the Attorney General shall by regulation reinstate
25 the exemption with respect to that particular drug

1 product if the Attorney General determines that the
2 particular drug product is manufactured and distrib-
3 uted in a manner that prevents diversion.

4 “(2) FACTORS TO BE CONSIDERED.—In decid-
5 ing whether to reinstate the exemption with respect
6 to a particular drug product under paragraph (1),
7 the Attorney General shall consider—

8 “(A) the package sizes and manner of
9 packaging of the drug product;

10 “(B) the manner of distribution and adver-
11 tising of the drug product;

12 “(C) evidence of diversion of the drug
13 product;

14 “(D) any actions taken by the manufac-
15 turer to prevent diversion of the drug product;
16 and

17 “(E) such other factors as are relevant to
18 and consistent with the public health and safe-
19 ty, including the factors described in subsection
20 (b) as applied to the drug product.

21 “(3) STATUS PENDING APPLICATION FOR REIN-
22 STATEMENT.—A transaction involving a particular
23 drug product that is the subject of a bona fide pend-
24 ing application for reinstatement of exemption filed
25 with the Attorney General not later than 60 days

1 after a regulation removing the exemption is issued
2 pursuant to subsection (a) shall not be considered to
3 be a regulated transaction if the transaction occurs
4 during the pendency of the application and, if the
5 Attorney General denies the application, during the
6 period of 60 days following the date on which the
7 Attorney General denies the application, unless—

8 “(A) the Attorney General has evidence
9 that, applying the factors described in sub-
10 section (b) to the drug product, the drug prod-
11 uct is being diverted; and

12 “(B) the Attorney General so notifies the
13 applicant.

14 “(4) AMENDMENT AND MODIFICATION.—A reg-
15 ulation reinstating an exemption under paragraph
16 (1) may be modified or revoked with respect to a
17 particular drug product upon a finding that—

18 “(A) applying the factors described in sub-
19 section (b) to the drug product, the drug prod-
20 uct is being diverted; or

21 “(B) there is a significant change in the
22 data that led to the issuance of the regula-
23 tion.”.

24 (2) CLERICAL AMENDMENT.—The table of con-
25 tents of the Comprehensive Drug Abuse Prevention

1 and Control Act of 1970 (84 Stat. 1236) is amended
2 by adding at the end of that portion relating to part
3 B of title II the following new item:

“Sec. 204. Removal of exemption of certain drugs.”.

4 (c) REGULATION OF LISTED CHEMICALS.—Section
5 310 of the Controlled Substances Act (21 U.S.C. 830) is
6 amended—

7 (1) in subsection (a)(1)—

8 (A) by striking “precursor chemical” and
9 inserting “list I chemical”; and

10 (B) in subparagraph (B), by striking “an
11 essential chemical” and inserting “a list II
12 chemical”; and

13 (2) in subsection (c)(2)(D), by striking “precur-
14 sor chemical” and inserting “chemical control”.

15 **SEC. 3. REGISTRATION REQUIREMENTS.**

16 (a) RULES AND REGULATIONS.—Section 301 of the
17 Controlled Substances Act (21 U.S.C. 821) is amended
18 by striking the period and inserting “and to the registra-
19 tion and control of regulated persons and of regulated
20 transactions.”.

21 (b) PERSONS REQUIRED TO REGISTER UNDER SEC-
22 TION 302.—Section 302 of the Controlled Substances Act
23 (21 U.S.C. 822) is amended—

1 (1) in subsection (a)(1), by inserting “or list I
2 chemical” after “controlled substance” each place it
3 appears;

4 (2) in subsection (b)—

5 (A) by inserting “or list I chemicals” after
6 “controlled substances”; and

7 (B) by inserting “or chemicals” after
8 “such substances”;

9 (3) in subsection (c), by inserting “or list I
10 chemical” after “controlled substance” each place it
11 appears; and

12 (4) in subsection (e), by inserting “or list I
13 chemicals” after “controlled substances”.

14 (c) REGISTRATION REQUIREMENTS UNDER SECTION
15 303.—Section 303 of the Controlled Substances Act (21
16 U.S.C. 823) is amended by adding at the end the following
17 new subsection:

18 “(h) The Attorney General shall register an applicant
19 to distribute a list I chemical unless the Attorney General
20 determines that registration of the applicant is inconsis-
21 ent with the public interest. Registration under this sub-
22 section shall not be required for the distribution of a drug
23 product that is exempted under section 102(39)(A)(iv). In
24 determining the public interest for the purposes of this
25 subsection, the Attorney General shall consider—

1 “(1) maintenance by the applicant of effective
2 controls against diversion of listed chemicals into
3 other than legitimate channels;

4 “(2) compliance by the applicant with applica-
5 ble Federal, State, and local law;

6 “(3) any prior conviction record of the appli-
7 cant under Federal or State laws relating to con-
8 trolled substances or to chemicals controlled under
9 Federal or State law;

10 “(4) any past experience of the applicant in the
11 manufacture and distribution of chemicals; and

12 “(5) such other factors as are relevant to and
13 consistent with the public health and safety.”.

14 (d) DENIAL, REVOCATION, OR SUSPENSION OF REG-
15 ISTRATION.—Section 304 of the Controlled Substances
16 Act (21 U.S.C. 824) is amended—

17 (1) in subsection (a)—

18 (A) by inserting “or a list I chemical”
19 after “controlled substance” each place it ap-
20 pears; and

21 (B) by inserting “or list I chemicals” after
22 “controlled substances”;

23 (2) in subsection (b), by inserting “or list I
24 chemical” after “controlled substance”;

1 (3) in subsection (f), by inserting “or list I
2 chemicals” after “controlled substances” each place
3 it appears; and

4 (4) in subsection (g)—

5 (A) by inserting “or list I chemicals” after
6 “controlled substances” each place it appears;
7 and

8 (B) by inserting “or list I chemical” after
9 “controlled substance” each place it appears.

10 (e) PERSONS REQUIRED TO REGISTER UNDER SEC-
11 TION 1007.—Section 1007 of the Controlled Substances
12 Import and Export Act (21 U.S.C. 957) is amended—

13 (1) in subsection (a)—

14 (A) in paragraph (1), by inserting “or list
15 I chemical” after “controlled substance”; and

16 (B) in paragraph (2), by striking “in
17 schedule I, II, III, IV, or V,” and inserting “or
18 list I chemical,”; and

19 (2) in subsection (b)—

20 (A) in paragraph (1), by inserting “or list
21 I chemical” after “controlled substance” each
22 place it appears; and

23 (B) in paragraph (2), by inserting “or list
24 I chemicals” after “controlled substances”.

1 (f) REGISTRATION REQUIREMENTS UNDER SECTION
2 1008.—Section 1008 of the Controlled Substances Import
3 and Export Act (21 U.S.C. 958) is amended—

4 (1) in subsection (c)—

5 (A) by inserting “(1)” after “(c)”; and

6 (B) by adding at the end the following new
7 paragraph:

8 “(2)(A) The Attorney General shall register an appli-
9 cant to import or export a list I chemical unless the Attor-
10 ney General determines that registration of the applicant
11 is inconsistent with the public interest. Registration under
12 this subsection shall not be required for the import or ex-
13 port of a drug product that is exempted under section
14 102(39)(A)(iv).

15 “(B) In determining the public interest for the pur-
16 poses of subparagraph (A), the Attorney General shall
17 consider the factors specified in section 303(h).”;

18 (2) in subsection (d)—

19 (A) in paragraph (3), by inserting “or list
20 I chemical or chemicals,” after “substances,”;
21 and

22 (B) in paragraph (6), by inserting “or list
23 I chemicals” after “controlled substances” each
24 place it appears;

1 (3) in subsection (e), by striking “and 307”
2 and inserting “307, and 310”; and

3 (4) in subsections (f), (g), and (h), by inserting
4 “or list I chemicals” after “controlled substances”
5 each place it appears.

6 (g) PROHIBITED ACTS C.—Section 403(a) of the
7 Controlled Substances Act (21 U.S.C. 843(a)) is amend-
8 ed—

9 (1) by amending paragraphs (6) and (7) to
10 read as follows:

11 “(6) to possess any three-neck round-bottom
12 flask, tableting machine, encapsulating machine, or
13 gelatin capsule, or any equipment, chemical, prod-
14 uct, or material which may be used to manufacture
15 a controlled substance or listed chemical, knowing,
16 intending, or having reasonable cause to believe, that
17 it will be used to manufacture a controlled substance
18 or listed chemical in violation of this title or title II;

19 “(7) to manufacture, distribute, export, or im-
20 port any three-neck round-bottom flask, tableting
21 machine, encapsulating machine, or gelatin capsule,
22 or any equipment, chemical, product, or material
23 which may be used to manufacture a controlled sub-
24 stance or listed chemical, knowing, intending, or
25 having reasonable cause to believe, that it will be

1 used to manufacture a controlled substance or listed
2 chemical in violation of this title or title II or, in the
3 case of an exportation, in violation of this title or
4 title II or of the laws of the country to which it is
5 exported;”;

6 (2) by striking the period at the end of para-
7 graph (8) and inserting “; or”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(9) if the person is a regulated person, to dis-
11 tribute, import, or export a list I chemical without
12 the registration required by this Act.”.

13 **SEC. 4. ANTI-SMUGGLING PROVISION.**

14 Section 1010(d) of the Controlled Substances Import
15 and Export Act (21 U.S.C. 960(d)) is amended—

16 (1) by striking “or” at the end of paragraph
17 (1); and

18 (2) by adding at the end the following new
19 paragraph:

20 “(3) imports or exports a listed chemical in vio-
21 lation of section 1007 or 1018,”.

22 **SEC. 5. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.**

23 Section 510 of the Controlled Substances Act (21
24 U.S.C. 880) is amended—

1 (1) by amending subsection (a)(2) to read as
2 follows:

3 “(2) places, including factories, warehouses,
4 and other establishments, and conveyances, where
5 persons registered under section 303 (or exempt
6 from registration under section 302(d) or by regula-
7 tion of the Attorney General) or regulated persons
8 may lawfully hold, manufacture, distribute, dispense,
9 administer, or otherwise dispose of controlled sub-
10 stances or listed chemicals or where records relating
11 to those activities are maintained.”; and

12 (2) in subsection (b)(3)—

13 (A) in subparagraph (B), by inserting “,
14 listed chemicals,” after “unfinished drugs”; and

15 (B) in subparagraph (C), by inserting “or
16 listed chemical” after “controlled substance”
17 and inserting “or chemical” after “such sub-
18 stance”.

19 **SEC. 6. FORFEITURE EXPANSION.**

20 Section 511(a)(6) of the Controlled Substances Act
21 (21 U.S.C. 881(a)(6)) is amended by inserting “or listed
22 chemical” after “controlled substance”.

23 **SEC. 7. THRESHOLD AMOUNTS.**

24 Section 102(39)(A) of the Controlled Substances Act
25 (21 U.S.C. 802(39)(A)), as amended by section 2, is

1 amended by inserting “a listed chemical, or if the Attorney
2 General establishes a threshold amount for a specific listed
3 chemical,” before “a threshold amount, including a cumu-
4 lative threshold amount for multiple transactions”.

5 **SEC. 8. EFFECTIVE DATE.**

6 This Act and the amendments made by this Act shall
7 take effect on the date that is 120 days after the date
8 of enactment of this Act.

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